IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2767 of 2002

with

SPECIAL CIVIL APPLICATION No 2774 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMC
Versus
NARESHCHANDRA SOMALAL GOR

Appearance:
1. Special Civil Application No. 2767 of 2002
MR RM CHHAYA for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1
MR PR NANAVATI for Respondent No. 2
MR GD ACHARYA for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/12/2002

COMMON ORAL JUDGEMENT

#. Heard learned advcoate Mr.R.M.Chhaya on behalf of the petitioner - Municipal Corporation and learned advocate Mr.P.R.Nanavati appearing on behalf of the respondents in each petition.

#. Rule. Learned advocate Mr.P.R.Nanavati waives service of Rule on behalf of the respective respondent.

#. The brief facts giving rise to the present petition are as under :-

The respondent No.1 was allotted the right of superstructure on Block No.5/A/3 of the property belonging to the petitioner Corporation situate behind Lal Bungalow, C.G.Road known as Ellisbridge Staff Quarters on the basis of the Resolution No.1967 dated 5th January, 1989. It was specific condition of the said resolution that the respondent shall not transfer ownership and possession of the said property to any third without prior permission of the Municipal Corporation. According to the Corporation, the respondent No.1 after having taken benefit of the said resolution, the respondent No.1 has transferred the property in question to respondent No.2 - Sheeba Restaurant without prior permission of the Municipal Corporation and has also handed over the actual possession of the suit premises and as there was clear, deliberate and open breach of the conditions of the Resolution No.1967, the petitioner Corporation issued notice and initiated action against the respondents under the provisions of the Gujarat Public Premises Act [for short "the said Act"]. Thereafter, said proposal was registered as C.O.P. No.47 / 1992 wherein after taking into consideration the deposition of the petitioner's witness, the competent authority vide his order dated 21st January, 2000, held that the respondent No.1 and 2 are not entitled to possession of the premises and ordered to give back the possession of the said suit premises to the Corporation. Being aggrieved by the said order, the respondent No.1 filed an appeal as contemplated under Section 9 of the said Act being Civil Appeal No.19/2000 before the Court of Principal Judge, City Civil Court, Ahmedabad. Similarly, the respondent No.2 has also filed Civil Appeal NO.4 / 2000 before same appellate Court. The Appeals preferred by the respondent No.1 & 2 came to be allowed by the Principal Judge, City Civil Court, Ahmedabad vide his order dated 29th June, 2000. Hence, the order passed by the appellate authority is under challenge before this Court.

#. Learned advocate Mr.R.M.Chhaya appearing on behalf of the petitioner has submitted that the respondent No.1 was allotted and given the right of super structure on Block No.5/A/3 of the property belonging to the petitioner Corporation situate behind Lal Bungalow, C.G.Road known as Ellisbridge Staff Quarters. The said allotment was made because of the reason that the respondent No.1 was in service of the petitioner Corporation. He also submitted that one Resolution No.1967 dated 5th January, 1989 passed by the Standing Committee and made such allotment in favour of the respondent No.1. He also submitted that it was inherent condition of said resolution on the basis of which such allotment is made in favour of the respondent, that the respondent No.1 shall not transfer ownership and possession of the said property to any third party without prior permission of the Municipal Corporation. Upon detailed inquiry made by the petitioner Corporation through the Officers, it was revealed that after having taken benefits of the said resolution, the respondent No.1 has transferred the property in question to the respondent No.2 - Sheeba Restaurant without prior permission of the Municipal Corporation and had also handed over the actual possession of the suit premises. He also submitted that the respondent No.1 was not at all in possession of the suit premises and the respondent No.1 has been staying elsewhere and has no necessity of the said premises. Learned advocate Mr.Chhaya, therefore, submitted that it was clear, deliberate and open breach of the condition of the Resolution No.1967. Therefore, the Corporation has decided to initiate action against the respondents under the provisions of the Gujarat Public Premises Act [for short "the said Act"]. Thereafter, the Corporation has sent proposal of the petitioner Corporation which registered as C.O.P. No.47 / 1992 wherein the proceedings were initiated under the said Act by the Competent Authority. He also submitted that under Section 4 of the said Act, proceedings were undertaken by the competent authority and notices were served upon both the respondent Nos.1 & 2. Thereafter, full fledge proceedings were undertaken by the competent authority after giving reasonable opportunity of being heard and after taking into consideration the deposition of the witness of the petitioner viz. one Shri Yogesh Jayantilal Patel, by order dated 21st January, 2000 passed by the competent authority whereby it was held that the respondent No.1 is not entitled to possession of the premises in question and the respondents were ordered to give back the possession under the provisions of the said Act. Thereafter, both the respondents approached

the appellate Court of learned Principal Judge, City Civil Court, Ahmedabad by way of Civil Appeal Nos.4/2000 and 19 / 2000. Both these appeals heard together by the Principal Judge, City Civil Judge, Ahmedabad and passed the order on 29th June, 2000. Learned advocate Mr.Chhaya emphasised that the appellate Court has decided the matter mainly on the ground that notice as contemplated under the provisions of the Act, was not given to the respondents and that is how, both the Appeals came to be allowed by the appellate Court. Learned advocate Mr.Chhaya also submitted that before the competent authority, one witness Shri Yogesh Jayantilal Patel was examined as witness of the petitioner Corporation and proved resolution and also Condition No.8 even though this fact has not been properly appreciated by the appellate court. He also submitted that it is not in dispute between the parties that the respondent No.1 has transferred the possession of the suit premises in favour of the respondent No.2 and the respondent No.1 is not residing in the suit premises. He also submitted that it is a wrong conclusion of the appellate Court from the record as notice under the Act was served on the respondent No.1 and he did appear before the competent authority. He also submitted that similar notice was also served on the respondent No.2. He also submitted that the appellate court has wrongly come to the conclusion that the petitioner has not proved the service of notice on principles of the Evidence Act and therefore said finding is erroneous. He also submitted that said suit premises was allotted to the respondent No.1 was not for getting or earning any profit or using the said premises in a commercial manner. This material aspect has also been ignored by the appellate Court.

#. Learned advocate Mr.Chhaya has also pointed out that looking to the order passed by the competent authority that both the respondents had remained absent when the matter was proceeded according to the law. Therefore, on the basis of this fact, the appellate Court has come to the conclusion that the said order passed by the competent authority is contrary to the principles of natural justice. Therefore, since the appeals were allowed only on this ground, then in such circumstances, the appellate court ought to have remanded the matter to the competent authority for reconsideration of the matter after giving reasonable opportunity to the respondents. However, the Appeals were allowed without any remand order, meaning thereby, that illegal transaction contrary to the condition of the Resolution has prevailed and remained in existence especially when factually there is no much dispute of transfer of said suit premises to the

respondent No.2 by the respondent No.1. Therefore, he submitted that it is a public premises allotted to the respondent No.1 only on the ground that he was the employee of the Corporation and residential accommodation has been provided by the petitioner Corporation which has been misused by the respondent No.1 transferring the suit premises to the respondent No.2 and thereby earned profit without prior permission of the Corporation while committing breach of the Condition No.8 of the said Resolution. Therefore, this glaring aspect which ought to have been taken care by the appellate Court, has been totally ignored by the appellate authority.

#. Learned advocate Mr.P.R.Nanavati appearing on behalf of the respondent No.2 has submitted that the appellate court has rightly passed the order and rightly appreciated the matters as notice as contemplated under the said Act, were not served on the respondents. He also submitted that before the competent authority, on one occasion, the respondents had remained absent on 30th December, 1999 and that is how, the competent authority has decided the matter in absence of the respondents. He also submitted that the competent authority has committed error in relying upon the resolution which was not proved before the competent authority according to the Evidence Act. He also submitted that the respondent No.1 has paid the consideration of the sale of super structure to the petitioner Corporation and therefore now the Corporation is not having legal right upon the suit premises. Learned advocate Mr.Nanavati also supported the view taken by the appellate authority and submitted that since this petition is filed by the Corporation under Article 227 of the Constitution of India, this Court having limited jurisdiction and no error has been committed by the appellate court and therefore, no interference is called for at the hands of this Court while exercising the powers under Article 227 of the Constitution of India. Therefore, learned advocate Mr.Nanavati submits that there in no merit and as such, no substance in both these petitions and the same require to be rejected accordingly.

#. I have considered submissions made by learned advocates for the parties. This Court has also perused the impugned orders passed by the competent authority as well as the appellate court. The petitioner Corporation has filed application under Section 5 of the Act on 5th September, 1992. The main contention which was raised by the petitioner Corporation before the competent authority that respondent No.1 has violated and committed breach of

Resolution No.1967 and therefore the petitioner Corporation is entitled to possession of the suit premises. A specific case was put up by the Corporation that Condition No.8 of the Resolution dated 5th January, 1989 passed by the Standing Committee, has been violated by the respondent No.1 inasmuch as the suit premises has been transferred to respondent No.2 by the respondent No.1 without prior permission of the petitioner Municipal Corporation. Therefore, before approach to the competent authority, the petitioner corporation has served demand notice dated 7th August, 1991 on both the respondents. It has come on record that though said notice was served on the respondents, then also, the respondents have not acted upon the said notice. Not only that, after service of the notice on the respondents, no reply has been given by any of the respondents to the petitioner Corporation and that is how, ultimately the petitioner has approached the competent authority. The competent authority has also issued Notice under Section 4 dated 30th September, 1992 on both the respondents which was received by them and hearing was fixed by the competent authority. Before the competent authority, the respondent No.1 has produced reply given to the Inquiry Officer dated 29th March, 1993 as well as reply given to the Deputy Municipal Commissioner dated 29th May, 1991. The respondent No.1 has also produced a copy of the Irrevocable General Power of Attorney dated 18th June, 1990 which was executed by the respondent No.1 in favour of the respondent No.2. This itself shows that the respondent No.1 did appear before the competent authority and produce a copy of the reply dated 29th March, 1993 and 29th May, 1991, so also, the copy of the irrevocable general power of attorney dated 18th June, 1990. On behalf of the petitioner Corporation, one witness - Senior Clerk Shri Yogesh Jayantilal Patel was examined on 30th December, 1999 and on that occasion, both the respondents remained absent and therefore, the competent authority has proceeded further with the matter. Before the competent authority, Resolution No.1967 dated 5th January, 1989 was produced at page-6 & 7. It has come on record that at Page.7 of the said list, condition No.8 which seems to have considered by the competent authority. As per the said Condition No.8, it was agreed by the respondent No.1 that in case of transfer of the suit premises or quarter to a person other than Municipal employee then, the respondent No.1 will take necessary permission from the Corporation. The competent authority has considered that general power of attorney produced by the respondent No.1 produced at page-18 - 20 and come to the conclusion that it proved the fact that the respondent No.1 has transferred the suit premises to the respondent No.2 and the respondent

No.1 is not residing in the quarter as well as he was not having possession of the said quarter but in the suit premises, servants of the respondent No.2 are residing. Before the competent authority, the respondent has not produced any documentary evidence to show that before transferring the suit premises, the respondent No.1 had obtained any prior permission from the Corporation or not. But only defence was raised by the respondent before the competent authority that Resolution No.1967 dated 5th January, 1989 is not applicable to the respondents. The competent authority has considered Resolution No.1967 and come to the conclusion that in the said resolution, it is clearly mentioned in respect of Ellisbridge Staff Quarter and therefore, the said resolution is applicable to the suit premises. The respondent has also raised contention before the competent authority that before occupying the suit premises, consideration of sale of super structure has been paid by the respondent No.1 to the petitioner Corporation and therefore, the petitioner Corporation is not having legal right upon super structure. The answer given by the Corporation that the suit premises is not sold to the respondent No.1 but only the rights upon super structure has been given to the respondent No.1 and the land of the super structure was on lease and the petitioner Corporation has not executed any document in favour of the respondent No.1. No agreement to that effect has been executed by the petitioner Corporation in favour of the respondent No.1. It is only limited occupancy rights of the respondent No.1 to remain in possession of the suit premises and ultimately ownership is remained with the petitioner Corporation. Therefore, on the basis of this, the competent authority has come to the conclusion that the Corporation has merely transferred the occupancy rights to the respondent No.1 and the suit premises is a public premises under the Act and therefore, the provisions are applicable to the suit premises. The land belongs to the petitioner Corporation and that right has been retained with the petitioner Corporation as it was not transferred in favour of the respondent No.1. That said quarter was not sold to the respondent No.1 under Section 54 of the Transfer of Property Act and no necessary document of sale of immovable property was executed by the Corporation in favour of the respondent No.1. It was merely a transfer of occupancy rights in favour of the respondent No.1. After considering this legal situation, ultimately, the competent authority has come to the conclusion that the respondent has violated Condition No.8 of the Resolution No.1967 dated 5th January, 1989 and provisions of Gujarat Public Premises Act is applicable to the suit premises

and the possession of both the respondents are unauthorised and therefore, they require to be evicted from the suit premises, meaning thereby, it was proved before the competent authority beyond reasonable doubt on the basis of the record that both the respondents are unauthorised occupants and therefore the competent authority has passed the order against the respondents to evict the suit premises and hand over possession to the petitioner Corporation.

#. This order has been challenged by both the respondents before the appellate forum. I have also perused the order passed by the appellate Court. In para-4 of the judgment, the appellate court has considered the Rojkam of C.O.P Case No.47 / 1992 wherein details are given showing that on which date the matter was proceeded further or not and who remained present. The observations further reveals that on 16th December, 1999 the matter was adjourned on 30th December, 1999 and on 30th December, 1999, deposition of the Corporation's witness - Shri Yogesh Jayantilal Patel was recorded and on the very same day, his deposition was closed. In para-5 of the judgment of the appellate court, it was observed by the appellate court that though on two occasions, the proceeding before the competent authority in C.O.P. No.47 / 1992 took place after the lapse of three years, but both the appellants were never informed by sending notice either by post or by hand delivery and thereby there is violation of principles of natural justice. Before the appellate court, the Advocate appearing on behalf of the petitioner Corporation has specifically mentioned that on 30th December, 1999, the respondent No.1 had remained present but he was not prepared to give any application or any reply for adjournment and therefore the matter was not actually proceeded exparte but in fact, due to non cooperative attitude of the respondent No.1, the matter was proceeded further. The appellate authority has examined in detail the Rojkam as well a record of C.O.P. Case No.47 / 1999 in para-9 and 10 and ultimately come to the conclusion that looking to the record, on 30th December, 1999 the respondents were not remained present and therefore, the order has been passed by the competent authority in absence of the respondents without giving any reasonable opportunity to both the respondents. The appellate authority has observed in para-10 in last two line that on this point also, the appeals are being allowed. Thereafter, the appellate Court has examined the matter in respect of Resolution No.1967 dated 5th January, 1989. In para-10 of the judgment, the appellate Court has taken very highly technical view in the matter. The appellate

court has come to the conclusion that witness Shri Yogesh Jayantilal Patel has referred Resolution No.857 dated 12th September, 1984 which was not produced on record and Resolution No.1967 dated 5th January, 1989 which was produced on record but the same was not referred during examination of witness Yogesh Patel. This being a technical approach adopted by the appellate Court because one fact not disputed which is on record that resolution No.1967 dated 5th January, 1989 which was on record before the competent authority and that was not referred only in evidence of said witness Yogesh Patel that does not mean that said resolution cannot be relied upon by the competent authority. The observations made by the appellate court in para-11 are much relevant and therefore, the same are reproduced as under :-

"11. If we peruse the C.O.P., the Corporation refers and relies on resolution No.1967 dated 5.1.89 passed by the standing committee of the Corporation for allotment of staff quarters to the concerned employees. Now, if we peruse the deposition of the witness, Mr.Yogesh Patel on behalf of the corporation, he has not referred the resolution No.1967 dated 5.1.89, however, he has referred another resolution No.857 dated 12.9.84. He has further stated that the true copy of the said resolution is produced on record of this C.O.P. along with the letter showing the terms and conditions for transferring the property. The said resolution No.857 dtd. 12.9.84 is not produced on record whereas the simple copy with no sign or rubber stamp is produced and that too of resolution No.1967 dated 5.1.89. If we peruse the order of the competent authority, it refers resolution No.1967 dated 5.1.89 which is produced on record and the same is not referred by witness Yogesh Patel. In the whole order of the competent authority, he has not referred any part of the deposition of Yogesh Patel and more so, his saying of resolution No.857 dated 12.9.84. From the order of the competent authority, it appears that he has mechanically passed the order without applying his mind and without giving any opportunity to the respondents of C.O.P."

#. Thereafter, the appellate court has considered decision of the Apex Court in case of M/s Bareilly Electricity Supply C. Ltd. and Its Workmen reported in AIR 1972 S.C. 330. The said decision is referred and relied upon by the appellate court only to emphasis the

fact that reasonable opportunity according to the principles of natural justice was not given to the respondents. The appellate court has given reasoning in para-12 for setting aside the orders passed by the competent authority only on the ground that Resolution No.1967 dated 5th January, 1989 was not proved strictly before the competent authority which was relied upon by the competent authority. According to my opinion, before domestic tribunal or an authority under the special Act, has to deal with the cases wherein the corporate body is a party, naturally provisions of the Evidence Act do not applicable strictly in such cases. Therefore, approach and view of the appellate court, according to my opinion, is highly technical and the order seems to have passed mechanically while just keeping in mind the aspect that the competent authority has not followed the principles of natural justice. In such situation, when the principles of natural justice is violated by the competent authority while passing eviction order against the respondents then, it was the duty of the appellate court to see that the matter must have to be examined on merits after giving reasonable opportunity to both the respondents but the matter cannot be finally put to an end only on the ground of violation of principles of natural justice and there must be decision on merits in respect of each case which is in the interest of both the parties.

##. This Court has also considered the observations made by the Apex Court in case of M/s Bareilly Electricity Supply Co. Ltd vs. Its workmen reported in AIR 1972 S.C. 330 [Supra]. The relevant observations made by the Apex Court in aforesaid decision, relied upon by the appellate Court in the order are reproduced below.

"The application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross examination by the party against whom they are sought to be used. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order III Civil Procedure ode and the Evidence

Act both of which incorporate these general principles."

##. Considering the observations made by the Apex Court, ultimately, the Apex Court held that in absence of the party if any document or any person is examined, then right to cross examination must be given according to the principles of natural justice. From the record, it transpires that on 30th December, 1999, the respondent Nos. 1 & 2 not remained present before the competent authority and thereafter on the same day, one Yogesh Patel examined before the competent authority by the Corporation, then, naturally right to cross examination of said Yogesh Patel was not given to respondent Nos.1 & 2. Therefore, considering this fact as observed by the appellate authority in para-11 of the order and considering the observations made by the Apex Court, in my opinion, in such situation, it was the duty of the appellate authority to set aside the order of the competent officer and the matter could have been remanded back to the competent authority / officer to decide in accordance with law after giving reasonable opportunity of hearing to the respondents. But the appellate authority has set aside the order of the competent authority without remanding the matter to the competent officer. Therefore, in such situation, according to my opinion, the appellate court should have considered that the matter should be decided on merits rather than in technical breach of violation of principles of natural justice. Therefore, in above view of the matter, the option only available to the appellate authority was to remand the matter back to the competent officer especially when it was concluded by the appellate court that principles of natural justice violated while passing the orders by the competent officer. It also requires to be appreciated that appeals filed by the respondents against the order of the competent authority mainly on the ground of violation of pprinciples of natural justice. It may be appreciated that there was no such submissions on merits whether condition No.8 has been violated or not, whether suit premises has been transferred to respondent No.2 or not; and the respondent No.1 is residing in the suit premises or not. Thus, there was no submission or contention raised by the respondents before the appellate court on merits but only technical contention was raised about non compliance of the principles of natural justice and this is the only aspect examined by the appellate court while setting aside the orders of the competent authority for non compliance of the principles of natural justice but surprisingly, not remanded the matter back to the

competent authority for fresh decision in accordance with law on merits. This is the basic error committed by the appellate authority which requires to be interfered by this Court while exercising the the powers under Article 226 and 227 of the Constitution of India in the interest of justice.

##. It is desirable that the appellate court must have to see that the matter may be examined between the parties on merits. However, mere technical breach of violation of principles of natural justice is sufficient for setting aside the orders of the authority but on that count only, the matter could not have been put to an end finally and in such case, adjudication on merits remained undecided between the parties. Therefore, in a situation when any technical breach of non compliance of principles of natural justice as contended by one of the parties and the same is proved, in that case, the appellate authority must have first remanded the matter to the lower authority so that reasonable opportunity would be given by the lower authority and thereafter would have examined the merits of the matter to pass appropriate orders in accordance with law after giving reasonable opportunity to the respective parties. This is a legal obligation on the part of the appellate court but in the case on hands, the appellate authority has failed to exercise his discretionary powers and therefore, according to my opinion, this is a clear basic error which apparently found on the face of the record and the same requires to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution.

##. It is also contention raised by learned advocate Mr.P.R.Nanavati that this Court is exercising the powers under Article 227 of the Constitution and therefore, having very limited jurisdiction and powers to interfere with the matter. However, this contention does not hold much substance and significance. Recently, the scope of jurisdiction of the High Court under Article 227 of the Constitution has been examined by the Apex Court in case of OUSEPH MATHAI AND OTHERS VS. M. ABDUL KHADIR reported in [2002] 1 SCC 319. The Apex Court has observed that mere wrong decision is not a ground for exercise of jurisdiction under Article 227, the High Court may intervene under Article 227 only where it is established that lower court or tribunal has been guilty of grave dereliction of duty flagrant abuse of power, which has resulted into grave injustice to any party. Relevant observations made by the Apex Court in the aforesaid decision are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

##. This Court has considered the case on hands, in light of the observations made by the Apex Court. In the instant case, the employee who was allotted and only given occupancy right of the super structure by the petitioner Corporation, had transferred the said super structure to the respondent No.2 and made profit out of the said transaction under the guise of irrevocable power of attorney dated 18th June, 1990. Thus, the public premises has been transferred without prior permission from the Corporation to a third party and thereby violated condition of the allotment of super structure by the respondent No.1. But fact remains that the land belongs to the petitioner Corporation and the respondent No.1 having only occupancy rights. The respondent No.1 is not residing in the suit premises. The possession has been taken over by the respondent No.2 from the respondent No.1. The appellate court after coming to the conclusion that the competent authority has passed the order in violation of principles of natural justice and set aside the said order on that ground only. It has become clear that ultimately, the respondents have succeeded only on the technical ground of non compliance of principles of natural justice but on the other hand,

the merits remained undecided. Therefore, in such cases, when public property is involved and it has been misused by the respondents by transferring the property in favour of the respondent No.2, in such circumstances, it is the duty of the Court to see that the competent authority must have examined the merits of the matter and pass appropriate orders in accordance with law after giving reasonable opportunity of hearing to the respective parties. Therefore, according to my opinion, the appellate court seems to be guilty of dereliction of duty and fraglant abuse of powers while setting aside the order of competent authority but not remanding the matter back to the competent authority which has resulted into grave injustice to the petitioner Corporation. Therefore, the decision of the Apex Court in case of OUSEPH MATHAI AND OTHERS VS. M. ABDUL KHADIR reported in [2002] 1 SCC 319 referred to above, squarely applies to the facts of the case on hands inasmuch as the appellate Court committed basic error while not remanding the matter back to the competent authority for deciding the same on merits which found apparently on the face of the record and in such grave case, now it is the duty of the High Court to see that injustice must be removed by sending the matter back to the competent authority for deciding the same on merits. Therefore, according to my opinion, the appellate Court has committed grave error and guilty of dereliction of duty and fraglant abuse of power which has ultimately resulted into grave injustice to the petitioner Corporation. In view of the above discussion, the contention raised by learned advocate Mr.Nanavati cannot be accepted.

##. In the result, the order passed by the Principal Judge, City Civil Court, Ahmedabad dated 29th June, 2000 in Civil Appeal Nos.4 and 19 of 2000 and the order passed by the Competent Authority in C.O.P. Case No.47 / 1992 dated 21st January, 2000 are hereby quashed and set aside with direction to the competent authority to decide C.O.P. Case No.47 / 1992 in accordance with law after giving reasonable opportunity of hearing to the respondents herein, without being influenced of the order passed by this Court and the fact that this Court has set aside the order of appellate authority.

Rule, in both these petitions, is made absolute with no order as to costs.

Date : 19-12-2002 [H.K.Rathod, J.]

#kailash#